

SC REVENUE PROCEDURE 04-4

- SUBJECT:** Penalty Guidelines for ABL Violations
(ABC Laws)
- EFFECTIVE DATE:** Applies to all violation reports received by the Department of Revenue after July 1 2004 and to all unresolved violation reports issued prior to July 1, 2004.
- SUPERSEDES:** SC Revenue Procedure #95-7, SC Revenue Procedural Bulletin #01-3, SC Revenue Procedure #03-4, SC Revenue Procedure #04-3 and all previous documents and any oral directives in conflict herewith.
- REFERENCE:** Title 61 (Supp. 2002)
- AUTHORITY:** S.C. Code Ann. Section 12-4-320 (2000)
S.C. Code Ann. Section 1-23-10(4) (Supp. 2003)
- SCOPE:** The purpose of a Revenue Procedure is to provide procedural guidance to the public and to Department personnel. It is a written statement issued to assist in the administration of laws and regulations by providing guidance that may be followed in order to comply with the law. A Revenue Procedure is an advisory opinion; it does not have the force or effect of law and is not binding on the public. It is, however, binding on agency personnel until superseded or modified by a change in statute, regulation, court decision, or advisory opinion.

INTRODUCTION:

This procedure is an advisory opinion providing guidelines to be used by Department employees in assessing penalties for violations of the statutes and regulations governing the sale, distribution, or possession of beer, wine, and distilled spirits. The purpose of this procedure is to insure uniform penalty application. Flexibility is allowed to deal with situations that do not fall exactly within the guidelines.

The General Assembly established varying maximum penalties for the different types of licenses authorizing the sale of beer, wine, or distilled spirits. This procedure recognizes that the General Assembly found there was a difference between the different types of licenses.

PROCEDURE:

The Department recognizes that insuring compliance with the law, not punishment, is the reason for administrative penalties. Accordingly, except for the most serious offenses, the Department adopts a progressive response to assessing penalties. The penalties listed below provide a monetary amount, a license suspension period, license revocation, or some combination thereof. In counting the previous number of violations at the licensed location, the Department will go back three (3) years from the date of the most recent violation. Multiple violations written on the same date may, at the Department's discretion, be counted as one (1) violation, but separate penalties will be assessed for each violation.

These are guidelines only and this advisory opinion does not establish a binding norm. There will often be circumstances present that call for either more severe or less severe sanctions for an offense. These guidelines do not restrict the Department's authority to impose any sanction within the statutory authority granted by the General Assembly. For example, the Department will consider mitigating circumstances when assessing penalties, and may reduce the penalties outlined in this advisory opinion when mitigating circumstances exist. Generally, if recognized mitigating circumstances are present, monetary penalties will be reduced, suspensions will be reduced in duration, and revocations will be reduced to suspensions with monetary penalties. Mitigating circumstances include, but are not limited to:

1. The employee committing the violation has completed a training program recognized by the Department.¹ This training must have taken place within a reasonable period of time prior to the offense and must include training covering the violation at hand. The person claiming mitigating circumstances under this item must also provide the Department verification that the employee attended the training and an outline of the training conducted.
2. Documented in-house training given to the offending employee on a regular and frequent basis. This in-house training must contain instruction relevant to the type of violation at issue.
3. Documentation that an internal check (e.g. visit to the offending store by a mystery shopper) designed to ensure compliance occurred within a reasonable period of time prior to the offense. This internal check must be relevant to the type of violation at issue.
4. Automated age verification programs if the violation deals with age.
5. The volume of sales of beer, wine or liquor at a location. For example, a location with a large number of clerks and a high volume of beer sales is more likely to have a problem with violations than a location with a small volume of beer sales.

¹ Trade associations and other organizations seeking to have a training program recognized by the Department should send the request along with a detailed description of the training program to: SC Department of Revenue, Regulatory Division Administrator, P.O. Box 125, Columbia, SC, 29214.

The determination as to whether mitigating circumstances warrant the reduction in penalties is within the sole discretion of the Department.

OFFENSES AND PENALTY GUIDELINES:

The penalties listed below provide a monetary amount, a license suspension period, license revocation, or some combination thereof. In counting the previous number of violations at the licensed location, the Department will go back three (3) years from the date of the most recent violation. Multiple violations written on the same date may, at the Department's discretion, be counted as one (1) violation, but separate penalties will be assessed for each violation.

Beer and Wine (Retail)

1. All offenses except as specified below or as otherwise specified by statute (see Note below):

- | | |
|-------------|----------------------|
| 1st offense | - \$500 |
| 2nd offense | - \$1,000 |
| 3rd offense | - 45 Days Suspension |
| 4th offense | - Revocation |

2. Hindering/delaying inspection: - Revocation

3. Permittee/employee not of good moral character: - Revocation

4. Permitting drug offenses: - Revocation

5. Permitting lewd entertainment: - Revocation

6. Permitting acts that constitute a public nuisance: - Revocation

7. Any time the Department seeks the revocation of a minibottle license or an adjoining retail liquor license: - Revocation

8. Failure to comply with the sign requirements, or to conspicuously post a retail permit, under 61-4-70, 61-4-900, Reg. 7-200.3, and Reg. 7-200.5 - \$50

Note: No administrative offense against a beer and wine permit will be issued pursuant to Code Section 61-4-580(5) for permitting an act that constitutes a crime under the laws of this State, unless (1) the crime has a jail sentence as a possible penalty, (2) a criminal citation was issued to the permittee, agent, employee or other person on the licensed premises, and (3) the criminal act resulted in conviction.

Minibottles - Retail Sale and Consumption

1. All offenses except as specified below or as otherwise specified by statute:

1st offense	- \$400
2nd offense	- \$500
3rd offense	- \$500 and Revocation

2. Any time the department seeks revocation of beer and wine permit: - Revocation

3. Avoidance of taxes by refilling minibottles: - \$1,000 and revocation, plus payment of tax and tax penalties and interest

4. Failure to be primarily engaged in the preparation and serving of meals: - Revocation

5. Failure to comply with the sign requirements, or to conspicuously post a retail license, under 61-6-1520, 61-6-1530, 61-6-1800, Reg. 7-200.3, and Reg. 7-200.5 - \$200

Liquor (Retail)

1. All offenses except as specified below or as otherwise specified by statute:

1st offense	- \$500
2nd offense	- \$1,000
3rd offense	- 45 Days Suspension
4th offense	- Revocation

2. Any time the Department seeks revocation of an adjoining beer and wine permit: - Revocation

3. Interest in more than three (3) retail stores: - Revocation

4. Hindering/delaying inspection: - Revocation

5. Licensee, or person having actual control, not of good repute: - Revocation

6. Failure to comply with the sign requirements, or to conspicuously post a retail license, under 61-6-1520, 61-6-1530, Reg. 7-200.3, and Reg. 7-200.5 - \$100

Wholesale Beer and Wine and Wholesale Liquor

1. All offenses except as specified below or as otherwise specified by statute:

- 1st offense - \$500
- 2nd offense - \$1,500
- 3rd offense - 45 Days Suspension
- 4th offense - Revocation

2. Liquor licensee, or person having actual control, not of good repute: - Revocation

3. Beer and wine permittee not of good moral character - Revocation

4. Licensee or permittee or person acting on their behalf having an interest in a retail or manufacturing business - Revocation

Note: Failure to pay any penalty will subject the license holder to the Department's normal collection and enforcement procedures as authorized by statute.

SOUTH CAROLINA DEPARTMENT OF REVENUE

Burnet R. Maybank III
Burnet R. Maybank III, Director

September 13 _____, 2004
Columbia, South Carolina